

Declassified in Part - Sanitized Copy Approved for Release 2011/12/06 : CIA-RDP90M00004R001000140013-8

Page Denied

OCA 87-5539

OFFICE OF CONGRESSIONAL AFFAIRS**Routing Slip**

	ACTION	INFO
1. D/OCA		XXX
2. DD/Legislation	XXX	
3. DD/Senate Affairs		XXX
4. Ch/Senate Affairs		
5. DD/House Affairs		XXX
6. Ch/House Affairs		
7. Admin Officer		
8. Executive Officer		
9. FOIA Officer		
10. Constituent Inquiries Officer		
11. <input type="text"/>		XXX
12. <input type="text"/>		

SUSPENSE

27 Nov 87
DateAction Officer: Remarks: 2 Nov 87
Name/Date

STAT

STAT

STAT



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

October 26, 1987

O/CONGRESSIONAL AFFAIRS

87- 5588

LEGISLATIVE REFERRAL MEMORANDUM

TO: **Legislative Liaison Officer -**
 Office of Personnel Management
 Department of Agriculture
 Department of Commerce
 Department of Defense
 Department of Education
 Department of Energy
 Department of Health and Human Services
 Department of Housing and Urban Development
 Department of the Interior
 Department of Justice
 Department of Labor
 Department of State
 Department of Transportation
 Department of the Treasury
 ✓ Central Intelligence Agency
 Environmental Protection Agency
 National Aeronautics and Space Administration
 National Science Foundation
 Veterans Administration
 Office of Science and Technology Policy

SUBJECT: Department of Health and Human Services draft bill, "The Senior Biomedical Research Service Act," together with an explanatory paper.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than Friday, November 27, 1987.

Questions should be referred to Hilda Schreiber (395-7362), the legislative analyst in this office.

Naomi R Sweeney
Naomi R. Sweeney for
Assistant Director for
Legislative Reference

Enclosures



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

Recd OMB/LRD
10-19-87
OCT 16 1987

The Honorable James C. Miller III
Director, Office of Management
and Budget
Washington, DC 20503

Dear Mr. Miller:

In accordance with OMB Circular A-19, I am enclosing ten copies of a draft bill, the "Senior Biomedical Research Service Act", together with a draft transmittal letter to the Speaker of the House.

Please advise us as to the relationship of this draft bill to the program of the President.

Sincerely,

For Otis R. Bowen, M.D.

Otis R. Bowen, M.D.
Secretary

Enclosures



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

The Honorable Jim Wright
Speaker of the House
of Representatives
Washington, D.C. 20515

DRAFT

Dear Mr. Speaker:

Enclosed for the consideration of the Congress is a draft bill "To establish a Senior Biomedical Research Service in the Public Health Service." Upon enactment, the bill would be cited as the "Senior Biomedical Research Service Act."

The Senior Biomedical Research Service (SBRS) established by the draft bill would constitute the top civil service category for doctoral-level experts in biomedical research or clinical research evaluation in the Public Health Service.

Establishment of the SBRS is critical to our success in recruiting and retaining leading professionals who are essential to the performance of our scientific functions.

The National Institutes of Health (NIH), for example, works on the frontiers of knowledge. Its mission requires that key positions be filled by physicians and scientists of outstanding accomplishment. Further, since NIH's major research programs are long-term in nature, it is important that there be continuity in their leadership so that vital research projects are not disrupted by personnel turnover.

Unfortunately, at this time, the constraints on compensation contained in current law make it difficult for us to recruit and retain the Nation's leading biomedical researchers and to retain experts in clinical research evaluation. The senior leadership and research faculty of our universities and medical schools constitute an important source of personnel suited to assume key leadership roles in this Department's basic research programs. Unfortunately, we are ill-positioned to compete for these physicians and scientists. The mean compensation of a senior biomedical researcher in the civil service in this Department is \$78,109; it compares unfavorably with the \$164,500 that represents the mean compensation of current chairmen of medical school clinical departments. Likewise, the pay offered by businesses engaged in the development of new medical products outstrips the compensation we may now offer to our top experts in clinical research evaluation.

The purpose of the enclosed draft bill is to end the jeopardy faced by our biomedical research and clinical research evaluation programs by making this Department more competitive in the recruitment of top-flight physicians and biomedical scientists.

Page 2 - The Honorable Jim Wright

The draft bill establishes the SBRS in the excepted civil service and authorizes the Secretary of Health and Human Services to appoint its members and determine their compensation. The basic pay of members would range from the lowest pay for GS-15, Step 1 (currently \$53,830) to the rate of pay for Executive Level IV (currently \$77,500). In addition, a member whose duties include significant administrative responsibility would be eligible to receive supplemental pay not exceeding an amount equal to 10 percent of the rate of pay for Executive Level I (currently \$99,500, 10 percent of which is \$9,950). A member distinguished by significant scientific accomplishment would be eligible to receive supplemental pay not exceeding 25 percent of such rate (or \$24,875). The two supplemental pays could be additive, but the total basic and supplemental pay paid to a member could not exceed an amount equal to 110% of the rate of pay for Executive Level I (or \$109,450).

In a further effort to make service in the SBRS attractive, the annual leave of members would be permitted to accumulate without restriction.

Another benefit of perhaps greater importance concerns retirement. Many universities participate in annuity contract plans for their faculty (e.g., the Teacher Insurance and Annuity Association/College Retirement Equity Fund (TIAA-CREF)). Such portable retirement systems provide continuity of retirement security for individuals who change employers within academia.

Under the draft bill, the Secretary would be authorized to contribute up to 10 percent of a member's basic pay if the member was recruited from academia and wanted to continue coverage under his or her university's plan in lieu of participating in the Federal Employees Retirement System (FERS).

Other members of the SBRS would participate in the Civil Service Retirement System or FERS in accordance with the laws governing their application. Special treatment would be extended under FERS, however, for members who resigned a commission in the Commissioned Corps of the Public Health Service in order to accept appointment to the SBRS. Such an individual would receive basic FERS coverage retroactive to the date of appointment as an officer in the Commissioned Corps. (The Secretary would make a one-time payment to FERS to cover the cost of this credit.) In addition, the Secretary would make an initial contribution to the individual's FERS Thrift Savings Plan, the amount of which would be determined by a formula that takes into account the individual's basic pay and years of service in the Commissioned Corps.

An enclosure to this letter explains the provisions of the draft bill in detail.

Page 3 - The Honorable Jim Wright

I urge the Congress to give the enclosed draft bill its prompt and favorable consideration

We are advised by the Office of Management and Budget that there is no objection to the submission of this draft bill to the Congress, and that its enactment would be in accord with the program of the President.

Sincerely,

**Otis R. Bowen, M.D.
Secretary**

Enclosures

Senior Biomedical Research Service Act

Description of Provisions

Short Title

Section 1 provides that the Act may be cited as the "Senior Biomedical Research Service Act".

Establishment of Senior Biomedical Research Service

Section 2 adds to the Public Health Service Act a new section 228 that provides for the establishment of a Senior Biomedical Research Service.

Specifically, subsection (a) of the new section 228 provides that there shall be a Senior Biomedical Research Service in the Public Health Service.

Subsection (b) provides that the Service shall be appointed by the Secretary and shall consist of individuals outstanding in the field of biomedical research or clinical research evaluation. In order to be considered for appointment to the Service, an individual must, at a minimum, possess a doctoral-level degree in biomedicine or a related field, and meet the qualification standards prescribed by the Office of Personnel Management for appointment to a position at GS-15 of the General Schedule. Positions in the Service are in the excepted service, and the provisions of title 5, United States Code, relating to retention preference, performance appraisal, classification, General Schedule pay rates, and adverse actions shall not apply to any member of the Service.

Subsection (c) directs the Secretary to develop a performance appraisal system designed to provide for the systematic appraisal of the performance of members and to encourage excellence of performance by members.

Subsection (d) contains provisions related to the compensation of members. Specifically, paragraph (1) of subsection (d) provides that, subject to the limitations contained in the subsection, the Secretary shall determine the compensation of members.

Paragraph (2) provides that basic pay of members shall range from an amount equal to the minimum rate of pay for GS-15 of the General Schedule to the rate of pay for level IV of the Executive Schedule.

Paragraph (3) authorizes the payment of supplemental pay. Supplemental pay up to an amount equal to 10 percent of the rate of pay for level I of the Executive Schedule may be paid to a

member whose duties include significant administrative responsibility, and supplemental pay up to an amount equal to 25 percent of such rate may be paid to an individual distinguished by significant scientific accomplishment. The two supplemental pays may be additive, but the total basic and supplemental pay paid to a member may not exceed 110% of the rate of pay for level I of the Executive Schedule.

Subsection (e) provides that, in the case of a member recruited from an institution of higher education having a portable contribution retirement system, the Secretary may contribute an amount not to exceed 10 percent of the individual's basic pay to the institution's retirement system on the individual's behalf.

Subsection (f) generally authorizes the Secretary to appoint an individual who is separated from the Service involuntarily and without cause to a career position in the competitive civil service at grade GS-15 of the General Schedule. In the case of an individual who immediately prior to appointment to the Service was not a career appointee in the civil service or the Senior Executive Service, the appointment would be in the excepted civil service and could not exceed a period of two years.

Subsection (g) requires the Secretary to promulgate such rules and regulations, not inconsistent with the section, as may be necessary for the efficient administration of the Service.

Amendment Concerning the Commissioned Corps

Section 3 amends section 211(d) of the Public Health Service Act to make up to five years of service in the Senior Biomedical Research Service creditable for the purpose of computing the retirement pay of an officer of the Commissioned Corps.

Amendment to Title 5, United States Code, Concerning Annual Leave

Section 4 amends section 6304(f) of title 5, United States Code, to provide that the limitation on the accumulation of annual leave shall not apply to members of the Senior Biomedical Research Service.

Amendments to Title 5, United States Code, Concerning the Federal Employees Retirement System

Subsection (a) of section 5 amends section 8401(11) of title 5, United States Code, to exclude from the definition of "employee" (and thus from the application of the Federal Employees Retirement System (FERS)) a member of the Senior Biomedical Research Service who was recruited from a service

position with an institution of higher education and on whose behalf the Secretary of Health and Human Services makes contributions to the institution's retirement system.

Subsection (b) amends section 8411 of title 5, United States Code, to add a new subsection (g) concerning special credit under FERS for an individual who resigned a commission in the Commissioned Corps in order to accept appointment as a member of the Senior Biomedical Research Service.

Paragraph (1) provides that such an individual receives FERS credit for active service performed as an officer of the Commissioned Corps.

Paragraph (2) directs the Secretary of Health and Human Services to pay to the Treasury for the credit of FERS an amount equal to the product of the total amount of basic pay paid to the individual while an officer in the Commissioned Corps times the normal-cost percentage determined by the Office of Personnel Management for use at the time of the payment in computing the FERS contribution of agencies employing covered employees.

Paragraph (3) provides for the forfeiture of the special credit for service as an officer of the Commissioned Corps and credit for service as a member of the Senior Biomedical Research Service to the extent that such service is reflected in the computation of an individual's retirement pay as an officer of the Commissioned Corps.

Subsection (c) amends section 8432 of title 5, United States Code, to add a new subsection (i) that directs the Secretary of Health and Human Services to make an initial contribution to the Thrift Savings Fund on behalf of an individual who was an officer in the Commissioned Corps for fewer than twenty years and who resigned a commission in order to accept an appointment as a member of the Senior Biomedical Research Service. This contribution is an amount equal to the product of the total basic pay paid to the individual while serving as an officer in the Commissioned Corps times a scaled percentage set out below that varies with length of service in the Commissioned Corps.

<u>Years in Corps</u>	<u>Percent of Salary</u>
0-3	1%
4-6	2%
7-9	3%
10-12	4%
13-15	5%
16-19	6%

Subsection (d) amends section 8432(g) of title 5, United States Code, to add a new paragraph (4).

Subparagraph (A) of the new paragraph (4) provides for the vesting at a rate of 5 percent per annum of the initial contribution to the Thrift Savings Fund by the Secretary of Health and Human Services on behalf of an individual who resigned a commission in the Commissioned Corps in order to accept appointment as a member of the Senior Biomedical Research Service. If, when the individual attains age 57, the vested percentage rate is less than 75%, the vested percentage rate shall be raised to 75%. Vesting of contributions shall continue thereafter on the individual's birthday at a rate of 5 percent per annum. The individual must be a Federal employee in a position covered by FERS throughout a year in order to vest 5 percent for that year.

Subparagraph (B) of new paragraph (4) provides for the forfeiture of employer contributions to the Thrift Savings Plan if the individual ceases to be a member of the Senior Biomedical Research Service, to the extent that the service for which the contribution was made is reflected in the computation of the retirement pay of the individual as an officer of the Commissioned Corps.

Tax Treatment of Annuities Purchased for Certain Members Recruited from Academia

Section 403 (b)(1) of the Internal Revenue Code of 1986 provides that if an annuity contract is purchased (1) for an employee by an employer described in section 501(c)(3) of the Code which is exempt from tax under section 501(a) of the Code, or (2) for an employee who performs services for an educational organization described in section 170(b)(1)(A)(ii) of the Code by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing, then amounts contributed by the employer for the annuity contract are, within certain limitations, excludable from the employee's gross income and not subject to tax until the employee receives payments under the annuity contract.

Section 6 of the draft bill extends the same rule to annuities purchased by the Secretary of Health and Human Services for members of the Senior Biomedical Research Service who left positions with institutions of higher education in order to join the Service. (A similar provision deferring the taxability of annuities purchased by the Secretary of Defense for the civilian faculty and staff of the Uniformed Services University of the Health Sciences was enacted in 1980.)

Effective Date

Section 7 provides that, except as otherwise provided, the provisions of the Act shall be effective on the ninetieth day following the date of its enactment.

A B I L L

To establish a Senior Biomedical Research Service in the Public Health Service.

Be it enacted by the Senate and House of Representatives in Congress assembled,

SHORT TITLE

Section 1. This Act may be cited as the "Senior Biomedical Research Service Act".

ESTABLISHMENT OF
SENIOR BIOMEDICAL RESEARCH SERVICE

Sec. 2. Title II of the Public Health Service Act is amended by adding at the end thereof the following new section:

"Senior Biomedical Research Service

"Sec. 228. (a) There shall be in the Public Health Service a Senior Biomedical Research Service (hereinafter in this section referred to as the "Service").

"(b) The Service shall be appointed by the Secretary without regard to the provisions of title 5, United States Code, regarding appointment, and shall consist of individuals outstanding in the field of biomedical research or clinical research evaluation. No individual may be appointed to the Service unless such individual (1) has earned a doctoral level degree in biomedicine or a related field, and (2) meets the qualification standards prescribed by the Office of Personnel Management for appointment to a position at GS-15 of the General Schedule. Notwithstanding any previous applicability to an individual who is a member of the Service, the provisions of subchapter I of chapter 35 (relating to retention preference),

chapter 43 (relating to performance appraisal and performance-based actions), chapter 51 (relating to classification), subchapter III of chapter 53 (relating to General Schedule pay rates), and chapter 75 (relating to adverse actions) of title 5, United States Code, shall not apply to any member of the Service.

"(c) The Secretary shall develop a performance appraisal system designed to --

"(1) provide for the systematic appraisal of the performance of members, and

"(2) encourage excellence in performance by members.

"(d)(1) The Secretary shall determine, subject to the provisions of this subsection, the basic and supplemental pay of members of the Service.

"(2) The basic pay of a member of the Service shall not be less than the minimum rate payable for GS-15 of the General Schedule and shall not exceed the rate for level IV of the Executive Schedule.

"(3)(i) In order to recruit and retain personnel of outstanding accomplishment, the Secretary may pay to a member of the Service supplemental pay not to exceed the percent specified in clause (ii) of the rate of pay for level I of the Executive Schedule.

"(ii) For purposes of clause (i), the percent expressed in this clause is --

"(I) 10 percent, in the case of a member whose duties include significant administrative responsibility, and

"(II) 25 percent, in the case of a member distinguished by significant scientific accomplishment.

"(iii) A member may be paid supplemental pay that recognizes his administrative responsibilities and supplemental pay that recognizes his scientific accomplishments, except that in no case may the total basic pay and supplemental pay paid to a member exceed 110 percent of the rate of pay for level I of the Executive Schedule.

"(e) The Secretary may, upon the request of a member who --

"(1) performed service in the employ of an institution of higher education immediately prior to his appointment as a member of the Service, and

"(2) retains the right to continue to make contributions to the retirement system of such institution after his separation from service from such institution, contribute an amount not to exceed 10 percent per annum of the member's basic pay to such institution's retirement system on behalf of such member.

"(f) Subject to the following sentence, the Secretary may, notwithstanding the provisions of title 5, United States Code, regarding appointment, appoint an individual who is separated from the Service involuntarily and without cause to a position in the competitive civil service at GS-15 of the General Schedule, and such appointment shall be a career appointment. In the case

of such an individual who immediately prior to his appointment to the Service was not a career appointee in the civil service or the Senior Executive Service, such appointment shall be in the excepted civil service and may not exceed a period of 2 years.

"(g) The Secretary shall promulgate such rules and regulations, not inconsistent with this section, as may be necessary for the efficient administration of the Service."

AMENDMENT CONCERNING
THE COMMISSIONED CORPS

Sec. 3. Section 211(d) of the Public Health Service Act Act is amended by --

- (1) striking out "and" at the end of paragraph (2);
- (2) striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and
- (3) adding at the end thereof a new paragraph as follows:

"(4) service performed as a member of the Senior Biomedical Research Service established by section 228, except that, if there are more than five years of such service, only the last five years thereof may be included."

AMENDMENT TO TITLE 5, UNITED STATES CODE,
CONCERNING ANNUAL LEAVE

Sec. 4. Section 6304(f) of title 5, United States Code, is amended by --

- (1) striking out "or" at the end of paragraph (3);
- (2) striking out the period at the end of paragraph (4) and inserting in lieu thereof "; or"; and

(3) adding at the end thereof the following new paragraph:

"(5) the Senior Biomedical Research Service of the Public Health Service (established by section 228 of the Public Health Service Act).".

AMENDMENTS TO TITLE 5, UNITED STATES CODE,
CONCERNING THE FEDERAL EMPLOYEES RETIREMENT SYSTEM

Sec. 5. (a). Section 8401(11) of title 5, United States Code, is amended by --

- (1) striking out "or" at the end of clause (i)(III);
- (2) adding "or" at the end of clause (ii); and
- (3) adding at the end thereof a new clause as follows:

"(iii) any individual on whose behalf the Secretary of Health and Human Services makes contributions to a retirement system of an institution of higher education pursuant to section 228(e) of the Public Health Service Act;".

(b) Section 8411 of such title 5 is amended by adding at the end thereof the following new subsection:

"(g)(1) Except as provided in paragraph (3), an employee shall be allowed credit for active service performed as an officer of the Commissioned Corps of the Public Health Service if the employee, without a break in Federal service, resigned his commission in such Commissioned Corps in order to accept appointment as a member of the Senior Biomedical Research Service of the Public Health Service.

"(2) The Secretary of Health and Human Services shall pay to the Treasury for deposit to the credit of the Fund, from appropriated funds available for the payment of salaries, an amount equal to the product of (A) the total amount of basic pay paid to an employee after such employee was appointed to such Commissioned Corps and before such employee resigned his commission in order to accept appointment as a member of such Senior Biomedical Research Service, times (B) the normal-cost percentage computed by the Office for use, at the time of such Secretary's payment, in making the computation required by section 8423(a)(1)(A).

"(3) No credit shall be allowed under this section for active service performed as an officer of such Commissioned Corps or service as a member of such Senior Biomedical Research Service to the extent that such service is included in the term "active service" for purposes of the computation of the retirement pay of a retired officer of such Commissioned Corps pursuant to section 211 of the Public Health Service Act."

(c) Section 8432 of such title 5 is amended by adding at the end thereof a new subsection as follows:

"(i)(1) By the end of the first pay period that includes the first date on which an employee may make contributions under subsection (a), the Secretary of Health and Human Services shall contribute to the Fund, for the benefit of an employee who was an officer in the Commissioned Corps of the Public Health Service for fewer than twenty years and who resigned his commission in

order to accept appointment as a member of the Senior Biomedical Research Service of the Public Health Service, an amount equal to the product of the total amount of basic pay paid to such individual from the time he was appointed to such Corps to the time he so resigned his commission, times the percent specified in paragraph (2). The Secretary shall make such contribution from appropriated funds available for the payment of salaries.

"(2) For purposes of paragraph (1), the percent specified in this clause is --

"(A) 1.0 percent, in the case of an individual who actively served in the Commissioned Corps for less than 4 years;

"(B) 2.0 percent, in the case of an individual who actively served in the Commissioned Corps for 4 or more years, but less than 7 years;

"(C) 3.0 percent, in the case of an individual who actively served in the Commissioned Corps for 7 or more years, but less than 10 years;

"(D) 4.0 percent, in the case of an individual who actively served in the Commissioned Corps for 10 or more years, but less than 13 years;

"(E) 5.0 percent, in the case of an individual who actively served in the Commissioned Corps for 13 or more years, but less than 16 years; and

"(F) 6.0 percent, in the case of an individual who

actively served in the Commissioned Corps for 16 or more years, but less than 20 years."

(d) Section 8432(g) of such title 5 is amended --

(1) in paragraph (1), by striking out "and (3)" and inserting in lieu thereof ", (3), and (4)"; and

(2) by adding at the end thereof a new paragraph as follows:

"(4)(A) Subject to the provisions of the following sentence and subparagraph (B), contributions made for the benefit of an employee under subsection (i) and all earnings attributable to such contributions shall become nonforfeitable at a rate of 5 percent per annum, commencing on the first anniversary of such employee's appointment as a member of the Senior Biomedical Research Service of the Public Health Service, and continuing on such date in each subsequent year throughout which such individual continues to be an employee. If, on the date on which such employee attains age 57, the percentage of contribution that has become nonforfeitable in accordance with the preceding sentence is less than 75 percent, then the percentage of nonforfeitable contribution shall be increased to 75 percent, and shall be increased annually thereafter at the rate of 5 percent per annum on the date of the employee's birth in each subsequent year throughout which such individual continues to be an employee.

"(B) Contributions made for the benefit of an employee under subsections (c) and (i) and the earnings attributable to

such contributions shall be forfeited if such employee ceases his service as a member of the Senior Biomedical Research Service of the Public Health Service, to the extent that the service as a member of the Senior Biomedical Research Service or the service as an officer in the Commissioned Corps of the Public Health Service on account of which such contributions were made under subsection (c) or (i) is included in the term "active service" for purposes of the computation of retirement pay of a retired officer of the Commissioned Corps of the Public Health Service pursuant to section 211 of the Public Health Service Act."

TAX TREATMENT OF ANNUITIES
PURCHASED FOR CERTAIN
MEMBERS RECRUITED FROM ACADEMIA

Sec. 6. (a) An annuity contract purchased pursuant to section 228(e) of the Public Health Service Act by the Secretary of Health and Human Services for an employee who is a member of the Senior Biomedical Research Service of the Public Health Service shall, for purposes of section 403(b) of the Internal Revenue Code of 1986, be treated as an annuity contract purchased for an employee by an employer described in section 501(c)(3) of such Code which is exempt from tax under section 501(c) of such Code.

(b) Subsection (a) shall apply to service performed on or after the ninetieth day following the date of enactment of this Act in taxable years ending after such date.

EFFECTIVE DATE

Sec. 7. Except as otherwise provided, the provisions of this Act shall be effective on the ninetieth day following the date of its enactment.

Rec'd OMB/LRS
10-27-87

**The Senior Biomedical Research Service
Public Health Service**

Proposal: To establish the Senior Biomedical Research Service (SBRS) as the top ranking Civil Service category for biomedical research scientists in the Public Health Service (PHS).

Purpose: Establishment of the SBRS will better enable the PHS to retain and recruit the high level scientific researchers and scientific leadership essential to fulfill the biomedical research and clinical research evaluation missions of the PHS. It will also constitute an alternative, but comparable personnel system for current PHS commissioned officers who prefer a civilian appointment mechanism.

Eligibility: Doctoral-level research physicians and biomedical scientists who qualify as equivalent to research or clinical research evaluation faculty and/or biomedical science leadership at universities and medical schools at the full professor level and above could be eligible to join the SBRS. Specifically, this could include current members of the Senior Scientific Service, some incumbents of Senior Executive Service (SES) science leadership positions, and some GS/GM-15 scientists and science administrators. It could also include some physicians and biomedical scientists in the PHS Commissioned Corps currently at the O-5, O-6, O-7 and O-8 level. Eligible persons would need to meet the Office of Personnel Management (OPM) qualification standards for Grade GS-15 or above. All individuals designated as eligible for the SBRS will be offered the opportunity to join on a voluntary and noncompetitive basis. Presidential appointees requiring Senate confirmation would not be excluded from appointment to the SBRS, if they otherwise meet the above criteria.

Features of the New Senior Biomedical Research Service System:

1. **Agency Credentials Committee.** Each PHS Agency with research responsibility will establish an Agency Credentials Committee (ACC).

Members of the ACC will be appointed by the PHS Agency Head. The Committee will consist of permanent members from the Office of the PHS Agency Head and non-permanent members

serving 3-year terms from the Agency's second echelon components (Bureaus, Institutes, Centers, Divisions). At the time of the establishment of the Committee, the terms of the non-permanent members will be staggered to provide for an orderly rotation. The Committee will include members of the Office of the PHS Agency Head, second echelon component Directors, second echelon component Scientific Directors, and second echelon component Extramural Directors.

For example: at the NIH, an 11-person Committee could consist of the NIH Deputy Director, the NIH Deputy Director for Intramural Research and the NIH Deputy Director for Extramural Research; each to serve as permanent members. The Committee could have as 3-year appointees: 3 Institute (Division) Directors, 3 Institute (Division) Scientific Directors, and 2 Institute (Division) Extramural Directors. The permanent Chairperson could be the NIH Deputy Director.

The ACC will recommend to the PHS Agency Head on initial evaluation of qualifications of candidates for appointment to the SBRS.

In addition the ACC will recommend, to the PHS Agency Head, on:

- (a) appointment level (base salary) of each member,
- (b) annual adjustments to base salary of each member, and
- (c) annual level of supplemental pay for each member.

2. HHS Senior Biomedical Research Service Committee. The HHS will establish a Senior Biomedical Research Service Committee (SBRSC) to review annually the operations of the SBRS and the performance of the Agency Credentials Committees. The Committee will be responsible for advising the Secretary or his/her designee on the functioning of the SBRS and on any needed changes. The Committee will include the Head of each PHS Agency participating in the SBRS and other members as designated by the Secretary.
3. Type of Appointment and Tenure. Appointments to the SBRS are excepted from the competitive civil service:
 - a. Eligible career Federal civilian employees with at least three years of competitive service will be appointed directly as tenured members of the SBRS.

- b. Eligible PHS commissioned officers with at least three years of active PHS commissioned service would be given an opportunity, within 6 months of the establishment of the SBRS, to inactivate their commission and could be appointed directly as tenured members of the SBRS.
- c. Eligible PHS commissioned officers with 20 or more years of service may be permitted to retire and join the SBRS as tenured members. They would not receive an immediate PHS annuity; receipt of such annuity would be deferred until such time as the member left Federal service.
- d. Members without 3 years of prior Federal career status, will enter the SBRS under a term appointment of three years, after which they may be appointed to tenured status on the basis of a determination of fully satisfactory performance. The ACC, after a review of the record of an applicant without Federal career status or with less than three years of creditable Federal service, may recommend a waiver of some or all of the 3 year requirement.

The number of appointments in the SBRS will be governed by the funds available in the annual appropriation. Appointments will be made by the PHS Agency Head.

A service agreement would be negotiated initially, and annually thereafter, between the PHS Agency and the SBRS member, detailing the terms and conditions of employment and base and supplemental pays.

The present leave provisions of Title V will apply. However, there will be no cap on annual leave for year-end carry-over purposes.

Appointment to the SBRS provides or leads to tenure. However, once appointed to the tenured SBRS, a member may be terminated for cause, or for less than fully satisfactory performance. However, former career Federal employees and former PHS commissioned officers removed from the SBRS for less than fully satisfactory performance or who voluntarily resign from the SBRS may apply for reinstatement in the career service or recommissioning in the PHS Commissioned Corps.

- 4. Pay and Compensation. The base pay for members of the SBRS will range from the pay of GS-15, Step 1 (currently \$53,830) to the pay of Executive Level IV (currently \$77,500) (rank-in-person). Supplemental pay of up to 25% of Executive

Level I pay (this would currently be \$24,875) would be added, based on scientific and scientific program accomplishments, for scientists in shortage areas and for high priority needs in recruitment and retention (rank-in-area), and up to 10% of Executive Level I pay (currently \$9,950) for significant administrative responsibilities (rank-in-position). The two supplemental pays could be additive, but the total pay will not exceed 110% of Executive Level I pay (currently this would be \$109,450).

[Note: The general maximum described above is equivalent to about 66% of the mean compensation received in 1986-87 by chairmen of medical school clinical departments. Members of the SBRS will not be eligible for any additional compensation, such as Physicians Comparability Allowance (PCA) or SES Performance Awards. Further, it is recognized that Government-wide pay caps and other limitations comprise constraints in attempting to achieve comparability of compensation with the private sector, especially the academic medical centers. However, the examples of the Uniformed Services University of the Health Sciences (itself a Government academic medical center), the Veterans Administration, and indeed the military, where pay caps apply only to "base" pay, encourage the use of supplemental pay for shortage science/research areas and for important medical research administrative responsibility.]

Each member will also be reviewed annually for the purpose of determining his/her pay adjustments. The recommendation of the supervisor will be reviewed by the ACC. This committee will recommend to the PHS Agency Head an appropriate adjustment in pay. All final decisions on compensation for members of the SBRS will be made by the Secretary, HHS, or his designee. These adjustments are not appealable.

5. Retirement. The following retirement options will apply, as appropriate:
 - a. Civil Service employees transferring into the SBRS would remain in their existing retirement system-- Civil Service Retirement System (CSRS) or Federal Employees Retirement System (FERS).
 - b. PHS commissioned officers transferring into SBRS would receive basic FERS and Thrift Savings Plan (TSP) coverage prospectively on the same basis as other FERS employees; they further would be conveyed retroactive coverage under basic FERS and

TSP to cover their Commissioned Corps service:

- (i) Basic FERS coverage retroactive to the date of appointment as a PHS commissioned officer would be purchased by a one-time initial employer contribution to the basic FERS retirement fund. This initial contribution would be obtained by multiplying the PHS Commissioned Corps base salary from date of appointment to date of transfer by the full (employer/employee) costs percentage most recently published in the Federal Register by OPM (which was reduced to 14.8% effective October 1, 1987).
- (ii) a TSP account initial investment would be established by initial employer deposit of an amount equal to a scaled percentage of cumulative PHS Commissioned Corps base salary from date of appointment to date of transfer:

<u>Years in Corps</u>	<u>Percent of Salary</u>
less than 4 years	1%
4 years or more but less than 7	2%
7 years or more but less than 10	3%
10 years or more but less than 13	4%
13 years or more but less than 16	5%
16 years or more but less than 20	6%

Member contributions and earnings would be 100% vested from day of withholding. Total employer contributions and earnings would become vested at a rate of 5% each year from the date of transfer except that, at age 57, a vested percentage rate lower than 75% would be raised to 75% (resulting in 100% vesting at age 62, or after 20 years under the new system, in all cases)..

- c. New members from academic institutions with portable guaranteed contribution retirement systems (i.e., member guaranteed the option of continuing to make contributions after separating from employment with the original institution) would have the option of remaining in that guaranteed contribution system with the employer contributing 10% and the member 5% or participating in the FERS.
- d. New members, other than those cited above, will

participate in FERS.

6. Removal and Reconsideration. Under instructions prescribed by the Secretary, a tenured member may be removed at any time for such cause, including unacceptable performance, as will promote the efficiency of the Service. A member against whom an action is proposed shall be entitled to:
- a. at least 30 calendar days advance written notice stating the reasons for the proposed action and a reasonable time, but no less than 7 calendar days, to answer in writing and to furnish affidavits and other documentary evidence in support of the answer; however, when:
 - (i) there is reasonable cause to believe the member has committed a crime for which a sentence of imprisonment may be imposed or;
 - (ii) the circumstances are such that retention of the member in an active duty status during the notice period may be injurious to the member, his or her fellow workers, or the general public or may result in loss of or damage to Government property or;
 - (iii) the nature of the member's misconduct reflects unfavorably on the public perception of the service, the advance notice period and the opportunity to answer each may be reduced to not less than 24 hours, and the member may be placed in a non-duty status with pay before and during the notice period;
 - b. be represented by an attorney or other representative, and
 - c. a written decision, with the specific reasons therefor, by the PHS Agency Head at the earliest practicable date.

When the removal is because of or includes unacceptable performance:

- a. the ACC shall consider the record of performance and recommend a decision to the PHS Agency Head based solely on the performance issues; and, prior to such recommendation,
- b. the member shall be entitled, when requested in

his/her answer to the advance written notice, to an oral presentation to the ACC solely on the performance issues.

Within 30 calendar days after the date of the decision of the PHS Agency Head, a member shall be entitled to make written petition to the HHS SBRSC for the Secretary's reconsideration of the PHS Agency Head's decision. The HHS SBRSC, after consideration of the petition and the record, shall recommend a decision to the Secretary. A petition for reconsideration shall not stay the member's removal.

A member without tenure may be removed, without a review or an oral presentation to the ACC and without the right of reconsideration by the Secretary, not less than 14 calendar days after issuance of written notice that, at a minimum, states the effective date of the removal.

7. Provisions related to Staff reductions in the Senior Biomedical Research Service. In effecting staff reductions, the PHS Agency determines which positions must be eliminated. There would be no displacement of other members by members occupying positions which are to be eliminated except that members with tenure would displace members without tenure in the commuting area if they are highly qualified for their positions.

Tenured members who entered the SBRS from the career Senior Executive Service who are facing separation from the SBRS would be placed in a position at the grade 15 level. Their pay would not exceed the top step of the GS-15. If the organization in which they are placed is undergoing a reduction in force (RIF), they would compete under standard RIF procedures for their retention in their civil service position. To the extent practical, their performance ratings from the SBRS would be used as performance ratings in the RIF process. If this is not possible, they would be given presumed satisfactory ratings for each year for which an SBRS rating cannot be determined.

Tenured members who entered the SBRS from the competitive civil service and who are facing separation because of staff reductions would be placed in a position no lower than the grade of the position which they occupied when they left the civil service. Their pay would not exceed the top step of the grade in which they are placed. If the organization in which they are placed is undergoing a reduction in force (RIF), they also would compete under standard RIF procedures for retention in their civil service position. The same performance rating procedures described above for former SES members would apply.

Tenured members who entered the SBRS from the PHS Commissioned Corps with less than 20 years of service and who are facing separation from the SBRS:

- a. will be given temporary civil service appointments not to exceed one year in the commuting area of their former SBRS positions. At the option of the Agency, these appointments may be extended for an additional year. The grade level of the temporary appointments will be at the Grade 15 level. Their pay would not exceed the the top step of the GS-15; and,**
- b. Independent of these appointments, they may, at their option, apply for recommissioning in the PHS Commissioned Corps. If, at the Agency's option, they are accepted for recommissioning, service in the SBRS will be creditable on a one-for-one basis up to a maximum of five years as Corps service for any purposes.**

Non-tenured members who entered the SBRS from the excepted service and/or other members not in the above categories who are facing separation from the SBRS will be given a temporary appointment not to exceed 1 year in the commuting area of their former SBRS positions. At the option of the Agency, this appointment may be extended for an additional year. The grade level of the temporary appointment may be no lower than the step 1 of GS-15.

Members of the SBRS who are affected by a staff reduction have no right of appeal outside the Department. The PHS agency will establish a review procedure. This review procedure will be final and there will be no right of judicial review.

FINAL REVISIONS:

October 19, 1987.